

Remarks/Arguments

Reconsideration is respectfully requested. There are 17 claims pending in this application.

Examiner rejects:

- Claims 1 -17 based on 35 U.S.C 112, first paragraph
- Claims 1 and 2 based on 35 U.S.C. § 102(b)
- Claims 3 - 8 and 14 - 17 under 35 U.S.C. § 103(a)

Examiner has allowed:

- claims 9 - 13 if rewritten in independent form to include all the limitations of the base claim and any intervening claims.
- Since this is a final rejection made on the second office action, applicant's reply includes cancellation of, each rejected claim. Claims standing allowed, comply with any Examiner's requirements as to form.

Applicant respectfully traverses these rejections and has reiterated much of his earlier arguments.

With respect to the rejection of claims 1 -17 based on a 35 U.S.C 112, first paragraph "new matter" rejection.

Applicant asserts that such a new matter rejection is not warranted. Examiner states that *"the original disclosure does not provide sufficient disclosure that the interlocking mechanical system of the unidirectional toothed ramps are non-reversible as claimed in claim 1 or claim 5."* Applicant traverses for two reasons. First, the fact that the toothed ramps are described as unidirectional discloses that they only work in one direction. Logically, they can not work in the loosening direction only because that would mean that they could not work in the tightening direction and thus never get to a state where they could be loosened. On page 1 line 27 - 31 applicant discloses that the containers will be *"irremovably interconnected so as to form a single drinking container which is capable of vigorous mixing without the possibility of content leakage."* On page 9 lines 34 - 36 applicant states that *"first lock ring 10 engages second lock ring 38 to prevent disengagement of the containers by reversing the direction of rotation."* Second, applicant states clearly how first lock ring 10 engages second lock ring 38 at page 9 line 33 to 36, page 10 line 30 to 33, and page 11 line 30 to page 12 line 10. This is not a complex

locking system that needs a plethora of drawings and description to furnish an adequate description. This interlocking mechanical system is well known in the industry and can be found on common prescription drug child-proof containers (although these child-proof containers also have an additional feature that will allow the first and second lock rings to be taken out of engagement and allow this system to be bypassed). Applicant has provided sufficient disclosure in the figures and written description that one skilled in the art would understand how to make and use the interlocking mechanical system of the unidirectional toothed ramps. The non-reversible feature applicant claims in claim 1 or claim 5 was well disclosed in applicant's disclosure.

MPEP 706.07(a) states that second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is not necessitated by applicant's amendment of the claims. Here Examiner's new grounds of rejection, that of 35 U.S.C 112, first paragraph was not necessitated by applicant's amendment of claims. The amendment of claims 1 and 5 was fully supported in the written description and drawings. This final rejection is premature.

The applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application. MPEP 706.07

With respect to the rejection of claims 1 and 2 based on 35 U.S.C. § 102(b):

Foss '598 does not disclose a cylindrical configuration with a shoulder as is found in Applicant's invention. It is this shoulder that is critical to the simplistic fluid sealing design of Applicant's invention for this shoulder is where the elastomeric gasket is positioned to ensure the seal with another container's bottom. The precise depth of the receptacle and height of the neck is what allows the seal to be made at the shoulder outside of the interlocking engagement area (page 9 lines 30 - 32).

While Foss '598 discloses multiple connectable containers (seven in all), the manner of sealing the fluids within a connected set of containers is accomplished with a pressure seal effected by the use of an internal flange system arranged about the container top and mating bottom.

In way of an example, Foss's 1st embodiment uses inwardly formed flange 16 , seal 23 and mating flange 30 arranged about the container top 12 and bottom 13 to seal the joined containers. This complicates the design and fabrication of the container. Applicant's preferred embodiment (claims 1 - 6) utilizes a gasket 8 atop shoulder 6 to form the seal. No special

fabrication or flange formation is required on the container's threaded neck and receptacle. Looking at the other embodiments of Foss it can be seen that they all utilize complex designed flanges and landings, on their top and bottoms. This complexity is what Applicant strives to eliminate. The cost of the containers is mostly in the setup and tooling of the molds/patterns. The less complex the cheaper. This is a critical consideration for Applicant's invention.

Applicant also points out that the bottom seal is "a deformable bottom seal residing atop said bottom threaded indentation that is adapted for non elastic deformation". Unlike the seal of Foss, applicant's seal must not be removed for fear it would be swallowed. Applicant's containers are for beverages, who's contents will be directed toward children. A loose seal floating in the upper container would created potential liability issues. The seal is deformable as seen best in FIG. 2.

With respect to the rejection of claims 3 - 4 and 14 - 15 under 35 U.S.C. § 103(a):

Examiner poses that the "use of gaskets between fluid threaded couplings are old and well known in the art to prevent leakage". Herein lies the difference - Applicant's invention does not use the gasket at the threaded coupling like Foss- rather it resides between the shoulder and the bottom of two containers. It does not seal at the point of connection as do conventional fluid sealing gaskets. This is done to simplify the fabrication of the containers. As stated in the description, the intended use for these containers is for the intermixing of drinks. (Note the title of the patent application.) That means that these containers must be fabricated at a low cost since the sales of intermixable drinks is best suited for the children's beverage market, and as such will not have a high retail price. Much of Applicant's invention was developed out of fabrication and cost concerns. If Applicant's invention were developed to hold more expensive fluids, such as paint, Applicant's seal would not be where it is, nor would it be as large as it is or located as far from the mating surfaces.

Applicant refutes Examiner's statement that "it would have been obvious to one of ordinary skill in the art to provide for the shoulder neck and indentation bottom of the Foss reference with a gasket in order to provide a better seal." Applicant does not claim that this is a "better seal". In fact this is an inferior mechanical method of accomplishing a seal between two such containers. Applicant's seal will accomplish the purpose but its inferior sealing design is why Applicant included an interlocking mechanical system to prevent any minor adjustment or disengagement of interconnected containers. From a mechanical standpoint Applicant's seal is not as secure a the seal used in Foss. That is precisely why it would not be obvious to use Applicant's design. There is a reason that all the cited references utilize complex sealing designs - that is because they are trying to make an extremely secure seal. That is not the case here. The prior art teaches away from Applicant's claimed invention.

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Modification of references would be contrary to the purposes of prior structures and also could be made only in light of Applicants teachings, therefore modification is not a proper basis for rejection of claims. Ex Parte Harris v Board of Appeals 94 USPQ 282.

Without an appreciation of a problem there cannot be a solution. Applicant's use of a gasket is not believed to be obvious to the Examiner without the Applicant's teachings.

Regarding Examiner's rejection of claims 14 - 15, the Examiner has not shown where all of the Applicant's claim limitations have been combined or suggested to be combined in the Foss reference. Applicant asserts that the test of obviousness is not whether all of the elements are recited in the prior art but rather if there is a suggestion for the desirability and obviousness of making the combination.

Applicant points out that the first person to put the elements together so that the elements cooperate to produce a new and improved combination may give the world something that it did not possess before and is entitled, under the laws, to the benefit of a 20 yr period of protection. Here we see a new result accomplished, that of a low cost, easily fabricated interlocking container system.

One having references before him who was not cognizant of Applicants disclosure would not be informed that problem solved by Applicant ever existed; therefore references which never recognized Applicant's problem cannot have suggested its solution, -- references were improperly combined since there is no suggestion in either of them that they can be combined to produce Applicants result. In re Schaffer CCPA 108 USPQ 326

With respect to the rejection of claims 5 - 6 and 16 - 17 under 35 U.S.C. § 103(a):

Applicant disagrees with Examiner's grounds of rejection for these claims. Applicant's design does not allow for the disengagement and/or reuse of the locking ramps as does the cited reference. Applicant's invention allows the one time locking of two containers.

The claimed invention must be viewed as a whole. The references must be considered as a whole and must suggest the desirability and obviousness of making the combination. This has not been shown in the cited references. The desirability of using the locking ramps comes out of necessity from the inferior (but economical and easily constructed) liquid seal of Applicant's invention. The differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would not have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Applicant's design solve's a specific problem not encountered or envisioned in the prior art.

The Examiner must some suggestion or motivation, either in the references **or** reasoned from knowledge generally available to one skilled in the art, to modify the references or to combine reference teachings to support a prima facie case of obviousness. If Examiner states that *it would have been obvious to one skilled in the art . . .* this must be supported by a convincing line of reasoning. Examiner has not proved either of these.

Here we have a locking ramp system used to ensure that the compression of the seal is not altered and that the bottles are not ever uncoupled, as either of these situation can lead to potential fluid leaks.

Examiner has stated that "it would have been obvious to one of ordinary skill in the art to provide the container indentation of the Foss' device with corresponding ramps in order to prevent unwanted disengagement of the threaded coupling between the two containers." Applicant disagrees and makes two points here: first - Applicant's invention uses an unlockable locking ramp system; second - using an unlockable locking ramp system prevents the reuse of the container, and prevents the replacement or adjustment of any liquid seal between the containers. In the art of sealing fluid couplings, seal replacement is one of the foremost considerations. Applicant's invention does not allow for this and as such, goes against conventional design and would not be an obvious solution to anything.

Applicant believes that only when posed with Applicant's specific problems (low cost, ease of fabrication, one time use, and inferior seal design) would one skilled in the art combine the references to arrive at this unique and novel design.

"That an inventor has probed the strengths and weaknesses of the prior art and discovered an improvement that escaped those who came before is indicative of unobviousness not obviousness." *Fromson v. Anitec Printing Plates, Inc.*, 132 F.3d 1437, 45 USPQ 2d 1269, 1276 (Fed. Cir 1997).

With respect to the rejection of claims 7 - 8 under 35 U.S.C. § 103(a):

Applicant disagrees with Examiner's grounds of rejection for these claims. The Examiner must not base the rejection on hindsight after viewing Applicants invention. Applicant's invention does not function in the same way as does either of the cited references alone or in combination. The result of Applicant's invention could not be achieved by the combination of references that the Examiner has cited. Applicant submits that Examiner is not taking into account that in Applicant's invention the hard disk 52 is not actually removed from the container as is the plug 10 in Goyet.

Applicant's hard disk 52 has two features incorporated into it's design. It has a opening

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nodule 56 and a seal cutter 58. These work together in conjunction. The nodule ensures that there is the concentration of the twisting torque on a point of the hard disk rather than on the entire surface of the hard disk. This allows the weakest of children to break this hard disk seal and more importantly, allows the seal to be *partially torn away* from the end furthest from the seal cutter. (Reference page 10, lines 13 - 29) This ensures that the seal cutter is available to cut the circular arc in top seal 16. If the hard disk were to be *popped off* like plug 10 of Goyet, there would be no circular arc cut into the top seal of the lower container and the hard disk would end up in the upper container leading to a swallowing hazzard. Applicant's design strives not to remove this hard disk. That is exactly why there is a opening nodule.

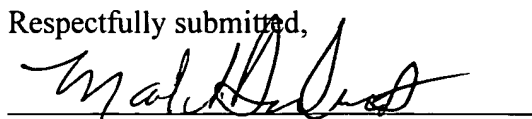
One having references before him who was not cognizant of Applicants disclosure would not be informed that problem solved by Applicant ever existed; therefore references which never recognized Applicant's problem cannot have suggested its solution. Here references were improperly combined since there is no suggestion in any of them that they can be combined to produce Applicants result. In re Schaffer CCPA 108 USPQ 326

The sterility of Goyet's packaging system is far inferior to that of Applicant's since Applicant's mixing container system with the additional top seal 16, provides for sterility up until the moment of fluid mixing. (Reference page 10, lines 34 - 36) Prior to the introduction of Goyet's bottle 2 into duct 9 of bottle 1, the cap 25 of bottle 2 is removed 2 thereby exposing the fluids to the atmosphere. This is because the two inventors do not seek to solve the same problem. Applicant is concerned with mixing beverages while Goyet is concerned with mixing hair coloring chemicals. Further, Applicant's invention has no limit to the number of substantially similar containers that can be chained together.

It is submitted that Applicant's novel design is far beyond the scope of ordinary mechanical skill in the art. The references have no appreciation of the problem Applicant has sets out to solve. The first man to put the elements together so that the elements would cooperate to produce a new and improved combination may give the world something that it did not possess before and is entitled, under the laws to the benefit of a 20 yr period of protection. Such is the case here.

In light of the above noted remarks, Applicant seeks examiner's withdrawl of finality of this action. Otherwise this application is believed in condition for allowance and notice thereof is respectfully solicited. The Examiner is urged to contact Applicant's attorney at 503-224-1640 if there are any questions.

Respectfully submitted,



Mark S. Hubert, Reg. No. 50,540
516 SE Morrison - Suite 1200
Portland, Oregon 97214 (503) 234-7711

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A handwritten signature in black ink, appearing to read "Mark H. Hest".